K 1950

File No. O.S.S.C. Exam. 50

Legal Department

A. **BRANCH**

Subject:—

O S.S.C. Exam

Opinions under the

Secondary School Certificate

Examination Act, 1948.

Q: 7

E

File No. O.S.S.C. Exam. /50

Gen. 194 e.

603-A

C O N T E N T S.

Legal Department File No. O.S.S.C. Exam./50.

Sr.No.	R.I./O.No.	Subject	Pages.
		Opinions under the Secondary School Certificate Examination Act, 1948.	
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3	O.No.11304/9-8-50.	Re: Prosecution of a Candidate who was declared successful at the S.S.C.Examination as it was noticed that some body else had actually appeared for him.	7-10
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Office of the R.L.A.

It has been rightly pointed out by the Additional Secretary, Legal Department, in his opinion No.6634 dated 15th May 1950, that prescribing qualifications and scles of remuneration of conductors and supervisors are matters which may be included in the Regulations. It seems that no Regulations have been made in this behalf so far, but the subject is governed by certain general principles to w which the Committee refers. Government can no doub give a direction to the Board to frame Regulations in this matter, and the Regulations may lay down qualifications for conductors, supervisors, etc. However, so long as no Regulations have been framed and even after they are framed, the actual power of appointment vests in the Board itself; and if the Board is of opinion that the appointment has been made in accordance with the principles or the Regulations, it will not be legally feasible for Government to give the Board a direction in respect of ~~xx~~ any particular individual whom the Board may have selected for appointment. Sub-section (2) of section 32 contemplates directions which are consistent with the Act, and it will not be consistent ~~xith~~ with the Act to direct the Board not to appoint a particular person when the power of appointment is solely vested in them. However, there should be no objection to communicating to the Board the views of Government in regard to any particular individual for their consideration. Whether communication of Government's views in these circumstances is expendient is a matter for the Administrative Department to decide.

R.D.P.
917
S.C.

Id/- (P.M.L.)
Remembrancer of Legal Affairs.

U.R.to E.D.No.10013,dated ~~xx~~ 15th July 1950.

Bombay Secondary School Certificate Examination Act, 1948 Sections 31(b), 33(2).

Under clause (b) of Sec. 31 of the Bombay Secondary School Certificate Examination Act, 1948 (XLIX of 1948) the Board has powers to make bye-laws consistent with this Act and the regulations to provide for the travelling and other allowances which may be drawn by members of the Board and the Committees appointed by the Board. But this power can be indirectly controlled by Government under the provisions of Section 33. Under sub-section (2) of section 33 the Board has to prepare before such date as may be prescribed, the financial estimates for the ensuing year and forward them to the State Government for sanction. The State Government may pass such orders with reference thereto as it thinks fit and communicate the same to the Board which shall give effect to such orders. Government has thus complete control over the Board's financial estimates and it is open to Government to point out that expenditure in respect of any particular item, travelling and daily allowances of members of the Board and its Committees, of the estimates is exhorbitant and pass orders that the same should be reduce. On Government passing such orders the Board will have to give effect to them, if necessary, by suitably amending its bye-laws. In any case the Board cannot incur any expenditure over and above the funds provided for in the financial estimates which must be considered to be final These statutory provisions made in Section 33(2) will have to be strictly construed and no payment of any sum out of the Board's fund can be made or

..... authorised

authorised unless the said payment is covered by an allotment under a grant in the sanctioned budget and a sufficient balance of such grant is still available (See Aiyangar's Municipal Corporation p. 224).

Id/- (P.M.L.)

Remembrancer of Legal Affairs.

U.R. to E.D.,No.10064,dated the 18th July 1950.

R.D.P.
9/7/56

S.C.

L.D.R.I.N. 14367
4-8-50.

Submitted.

Please see the report No 14581/GB,dated 20-7-50 of the Commissioner of ~~Bd Rt~~ Police, Bombay (at p.21 ante.) It appears that Shri A.N. Pathan of Savnur who was ~~xxxxx~~ declared as one of the successful candidates at the S.S.C. Examination held in March 1949 had made somebody else to appear in his place at Dadar Centre. The handwriting expert, Poona to whom the specimen handwriting of Shri Pathan and his answer papers were ~~xxxx~~ sent, is of the opinion that the answer papers were not in Shri Pathan's handwriting. Thereupon a charge-sheet was submitted against Shri Pathan under sec. 109 I.P.C. read with secs. 419 & 465 I.P.C. to the Court of the Presidency Magistrate 23rd Court, Esplanade, Bombay. However the Commr. of Police is of the opinion that as the impersonation has not been traced the case against Shri Pathan is rather weak.

The E.D. in its note dated 27/7/50 has observed that in view of this position, it is for the Commr. of Police to consider whether the case should be withdrawn or not. It is further observed, that the Board's contention that it cannot ~~xx~~ take any departmental action against the candidate so long ~~asx~~ the case is subjudice is not correct. The H.D. in its note dated 2-8-50 has opined that it would be competent for Govt. in E.D. to issue orders of withdrawal of the case against Shri Pathan if it so desires.

R.L.A. is requested to advise.

R.D.P.
9/7/56

S.C.

Office of the R.L.A.

The view taken by Home Department at page 4 ante is correct.

It is desirable that a departmental actx action should be taken against A.N. Pathan after the prosecution is withdrawn.

Sd/- (P.M.L.)

Remembrancer of Legal Affairs.

U.R. to H.D.No.11304,dated the 8th August '50

R.D.P.
9/7/56

S.C.

Legal Department.

Clause (3) of Regulation 26 of the Bombay Secondary School Certificate Examination Regulation, 1950, enables the Board to examine candidates attending schools situated outside the State of Bombay subject to scuh conditions as may be specified by the Board. Under this provision, the Board has got power, while giving permission, to say generally that all candidates studying in any school situated outside the State of Bombay may appear for the S.S.C.Examination. The mandatory provision contained in regulation 29 which provides that all applications for permission to appear at the examination shall be forwarded in the form prescribed by the Board to the Secretary through the head of a recognized high school would not apply to such candidates as the permission must have been already given to them generally even though the school cannot be recognized under the Act. It will, therefore, be quite necessary for the Board, while giving permission under regulation 26(3), to specify conditions in what manner and before what date candidates from a school are to give intimation to the Board about their intention to appaar for the examination and in what manner they are to transmit their fees for an examination.

Id/- (J.R.D.)

Additional Secretary to Government.

U.R. to E.D.No.14778,dated the 25th October 1950.

R.D.P.
9/7/56

S.C.